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SUBJECT: UKRAINE: CONSTITUTIONAL GAME HEATS UP

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Classified By: Ambassador for reasons 1.4(b,d).

1. (C) Summary. Rada Speaker Yatsenyuk and adviser to the Prime Minister Zadorozhnyi separately described to the Ambassador that BYuT-Regions collaboration on a new constitution was a reality that would move along quickly and that cooperation between President Yushchenko and Prime Minister Tymoshenko would continue to be difficult at best. Yatsenyuk said that he had urged Yushchenko to reach out to opposition leader Yanukovych as a possible ally, but he believed the most likely scenario was that BYuT and Regions would move forward in the Rada with their efforts to reform the constitution (in a way that could limit presidential powers and result in early parliamentary and presidential elections) and that the President was running out of options.

Zadorozhnyi confirmed that BYuT and Regions planned to submit separate, but very similar constitutional drafts to the Rada next week and the constitutional commission would be formed on May 13, but he said that this was still mostly a game to pressure the President into cooperation. However, he admitted that if Yushchenko did not give in to one side or the other, Ukraine could have a new constitution as early as September. Both said that the constitutional draft would give significant power to the opposition and move Ukraine closer to a two-party system. Zadorozhnyi also said the draft would significantly limit the President's power -- the one outstanding issue being whether the President would be elected by the public or the Rada. Yatsenyuk warned that Tymoshenko and Yanukovych's work was being facilitated by former Kuchma Chief of Staff Viktor Medvedchuk -- the bogeyman of the 2004 presidential campaign -- and that the latter's participation indicated Russian involvement in this new tactical alliance. Zadorozhnyi confirmed that Medvedchuk was playing a role, but he implied it was a small role.

2. (C) Comment. BYuT and Regions are pushing full steam ahead on the constitution, and Yushchenko's team seems worried and disorganized. Both the media and Zadorozhnyi have commented on the fact that the President hit a major setback when the Constitutional Court ruled that he could not pass his own constitution via referendum, slowing the work of his National Constitutional Council (its draft has still not yet been publicly released) and his opponents may be taking advantage of this derailment of his strategy. Yatsenyuk's comments about Tymoshenko's ambitions and her cooperation with Medvedchuk echo those made by Yushchenko and Baloha and may underscore that the presidential team is trying to send us this message. In many ways, Yushchenko may have inadvertently pushed Tymoshenko towards Regions by his relentless efforts to discredit her and block the Cabinet's progress on her priorities. However, no one believes that BYuT and Regions are headed towards any deep collaboration -- their mutual hatred is well established; they simply share a common enemy right now. Tymoshenko and Regions may both still be hoping to get concessions, or even a broad coalition for the latter, from the President now that he seems backed

into a corner. End summary and comment.

Yatsenyuk on BYuT-Regions Constitutional Collaboration

13. (C) In a one-on-one meeting in his private office, Yatsenyuk told the Ambassador on May 6 that he was generally pessimistic about the political situation. He said that Tymoshenko was going crazy, and that she wanted to be tsar. The Speaker claimed that he was supposed to meet with the PM on April 26, but she had stood him up because she was meeting with Medvedchuk. This led Yatsenyuk to a discussion of what he saw as the plans for constitutional reform. At one point Yatsenyuk referred to the new constitutional project as Medvedchuk's baby, another time he referred to Medvedchuk as the intermediary between Tymoshenko on one side and Yanukovych and Klyuyev on the other. (Note. Many in Yushchenko's camp and in the media have reported on Medvedchuk's involvement, but no one really knows what his role is. Because Medvedchuk is so universally hated in Kyiv, the President's team may see linking him to the PM as a useful PR tool. End note.)

14. (C) Yatsenyuk explained what he saw as the motivation for the two parties to overcome their mutual antipathy and collaborate on this constitutional project. Tymoshenko was a sprinter, she wanted either immediate constitutional change or early elections. For his part, Yanukovych hated being in the opposition. The proposed constitutional draft -- which Yatsenyuk claimed to have seen parts of -- would give the opposition real power and move Ukraine towards a two-party system. The opposition would get control of the Speakership and the Accounting Chamber (which controls privatization inflows and reports to the Rada on management of budget funds). The President would still be directly elected, but

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would have no real power. Yatsenyuk made reference to a new two-round parliamentary election system, which was described in detail in an article in respected newspaper Dzerkalo Tyzhnya. (Note. According to DT, if no party won an outright majority of seats in the first round, the two highest vote-getting parties would participate in a run-off, the winner of which would automatically get 226 seats in the new Rada and therefore the premiership and government. The remaining 224 seats would be distributed on a proportional basis to all other parties that crossed the election threshold in the first round. End note.) Yatsenyuk said that the only benefit to this new system is that it would eliminate the Communists. He also noted that Lytvyn was no longer a player. He added, however, that there were still some disagreements on text.

15. (C) Yatsenyuk also believed that there was a Russian angle to the BYuT-Regions cooperation. The Speaker argued that Moscow would benefit from the new system, presumably because it would cause more chaos in Ukraine and reduce Yushchenko's influence. (Note. In a related comment, Yatsenyuk said that if Ukraine blew its chance to get MAP in December, it may never get MAP, because Russia would keep getting richer and more influential, and its neighbors, including Ukraine, would get weaker. End note.) Yatsenyuk believed that Medvedchuk was the main conduit for the Kremlin, but that Tymoshenko had also cut a deal during her trip to Moscow, part of which was a promise to support a partnership with NATO that fell short of MAP, as Yanukovych had done in 2006, stressing practical cooperation rather than actual membership. Yatsenyuk also thought Tymoshenko, whom he termed "the best gas dealer in Ukraine," would also soon reach accommodation with Moscow on energy supplies. (Comment. While Tymoshenko has never been as openly supportive of NATO membership as Yushchenko, she seems equally suspicious of Moscow. She may have come to some terms with the Russians in hopes of resolving the gas relationship, but Yatsenyuk's accusations of a deeper alliance seem exaggerated. Even he recalled her "Containing Russia" article in Foreign Affairs. End comment.)

Urging the President to be Proactive

¶16. (C) Yatsenyuk said he had met with Yushchenko and urged him to stop playing the constitutional game because it was too dangerous. He believed the President had opened a Pandora's box by initiating reform and must now close it. With regard to the Rada Commission on the Constitution, Yatsenyuk said that he had made the suggestion that he lead it (in order to control it) to the President, but that the President had not wanted to hear this option and turned him down. Yatsenyuk also thought that one possible solution to Yushchenko's reelection quandary would be to reach consensus with Yanukovych and Akhmetov. The Speaker said he had urged the President to reach out to Yanukovych and ask him to end cooperation with Tymoshenko. (Comment. Presumably Yanukovych would entertain cooperation with Yushchenko if the President offered him something concrete, such as the premiership. However, Yatsenyuk did not indicate that Yushchenko was willing to do this. End comment.) The Speaker said that in a OU-Regions cooperation scenario a new leader would be needed; however, he didn't think they would reach consensus. Yatsenyuk said he had also offered himself up as an intermediary between Yushchenko and Tymoshenko to try to keep the coalition going. In the end, he believed BYuT and Regions moving forward on constitutional reform was the most likely scenario.

¶17. (C) Yatsenyuk also offered a few comments on Chief of Staff Baloha, his former boss when he was also at the Presidential Secretariat. The Speaker said that Baloha had gone from being part of the solution to being part of the problem. He said that Baloha came to all of the three-way meetings between President, PM, and Speaker, and always caused problems, which was one reason there had not been a three-way meeting in the past three weeks. Baloha was a smart tactician, but had no strategy. Yatsenyuk also said it was Baloha who had lost the Constitutional Court ruling on passing a constitution via referendum, but he offered no details other than to say his strategy had been "stupid".

Zadorozhnyi: Draft Coming, but Still a Tool in the Game

¶18. (C) Tymoshenko adviser Oleksandr Zadorozhnyi confirmed to the Ambassador on May 7 that BYuT was readying a constitutional draft to be submitted to the parliament on May 12. He anticipated that on May 13, the Rada would vote to establish a constitutional commission. In terms of procedure, Zadorozhnyi said that the commission would have two weeks to review any drafts and recommend one. The Rada

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needed a majority vote to send the draft to the Constitutional Court, which could take more than a month to review the draft to ensure that the amendments do not violate articles 157 and 158 (which state amendments cannot restrict human and citizen's rights.) Then the Rada will have about two weeks left before the summer recess to hold the first, simple majority vote on the new constitution. Assuming they get 226 votes, the required 300-member second (2/3 majority) vote could be held as early as September. On May 7, Tymoshenko said publicly that she hoped the first vote would be held next week.

¶19. (C) In terms of substance, Zadorozhnyi said BYuT and Regions had their own drafts that were almost identical except for the question of whether the President should be directly elected or elected in the Rada (article 103). BYuT favored the former -- although only after Zadorozhnyi convinced Tymoshenko that this was the more publicly popular alternative -- while Regions supported the latter. He said they were proposing to amend 58 of the constitution's 161 articles and add three new ones -- most of the changes were Tymoshenko's ideas, which were then translated into legal-ese

by a team of twenty lawyers, including Zadorozhniy. The most striking changes were the drastic limitation of presidential powers -- leaving the president with the powers of veto and legislative initiative, the right to nominate the head of the SBU and ambassadors, and the chairmanship of the NSDC. In addition, the opposition would get stronger powers, including the Speaker, the Accounting Chamber, one deputy prime minister, and the right to name deputy ministers and deputy governors. Zadorozhniy thought this was a good idea, because it would force the opposition to be constructive, which would help unify the country. Finally, he confirmed that the new draft laid out a two-round parliamentary election system, which he said was entirely Tymoshenko's idea -- her thinking had been that it would eliminate the need for a coalition by ensuring one party always had at least 226 seats. (Comment. In response to the Ambassador's question, Zadorozhniy reluctantly admitted that Medvedchuk was playing a role in this process; he would not elaborate on what the role was, but implied Medvedchuk was not a drafter, perhaps giving credence to the idea that Medvedchuk is a go-between for BYuT and Regions; and perhaps between BYuT and Moscow. End comment.)

¶10. (C) Despite all the work that had gone into preparing the draft constitution -- Tymoshenko had first gathered experts to discuss this document in late 2005 -- Zadorozhniy thought it was far from certain that a new constitution would actually be passed. He thought both BYuT and Regions were playing a game and trying to blackmail Yushchenko into cooperation. There was no guarantee that this would work -- the President was too hard to predict -- but Zadorozhniy's personal view was that Yushchenko would eventually choose to cooperate with either Tymoshenko or Regions. Zadorozhniy suggested that the Presidential Secretariat was not helping matters by continually insulting the PM. Senior Tymoshenko adviser Vitaliy Haiduk similarly commented to the Ambassador May 5 that it was not clear why Tymoshenko would want to reach agreement with Yushchenko -- Haiduk said the PM goes to meetings where she faces the President, Baloha, and 10 others from the Secretariat and all they do is criticize and rebuke her.

¶11. (C) Zadorozhniy also said that there was also the question of whether Tymoshenko and Regions could resolve the dispute over how to elect the president. Zadorozhniy said he had been in negotiations with different Regions groups and he thought eight of its ten leaders wanted the Rada to elect the president. Only Akhmetov and Kolesnikov might see otherwise, but they were isolated and disengaged on this issue. On the other hand, although Regions was stubborn, they had no ideological tie to any position, so they could change their view at any time. At the same time, Tymoshenko might also be convinced to change her point of view. What was important, according to Zadorozhniy, was that BYuT and Regions not reach agreement before their two drafts were submitted to the Rada commission. The fact that the two parties had voted together to override the President's veto on the CabMin law, passed in January 2007, had hurt BYuT's, and Tymoshenko's public image.

For them to submit a unified constitutional draft would be more bad PR for the PM who would be seen as openly walking away from the orange coalition. Zadorozhniy said that there were almost daily negotiations taking place and even Yushchenko was participating.

¶12. (C) The final topic Zadorozhniy elaborated on was the transitional phase, should a new constitution be adopted. He said that negotiations on this topic had not yet occurred, but that many believed a new constitution would bring early elections for the Rada and maybe even for the presidency.

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(Note. Haiduk said that he smelled new elections coming whether there is a new constitution or not. End note.) Zadorozhniy said his personal view was that they would agree to let Yushchenko serve out his term with his current powers and then the new constitution would come into force in early

¶2010.

¶13. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.
Taylor